

C. Written Comments Received (#1-#211)

DH

RESOURCE MANAGEMENT AGENCY
county of ventura

Environmental Health Department
Donald W. Koupp
Director

May 28, 1985

Rec'd after deadline
for comments.

State Water Resources Control Board
Division of Water Quality
David Holtry
P.O. Box 100
Sacramento CA 95801-0100

Dear Mr. Holtry:

We have received and reviewed your proposed modifications to your Underground Tanks Regulations (California Administrative Code, Title 23, Section 2621 et seq) dated May 14, 1985.

We find the proposed modifications to be minor and do not substantially change the Underground Tank Regulations.

Ventura County strongly supports your Underground Tanks Regulations and proposed modifications. As a local implementing agency, we find the regulations to be enforceable, and to provide for protection of our sensitive groundwater resources.

We urge your Board to immediately adopt these proposed modifications to the Underground Tank Regulations.

Very truly yours,

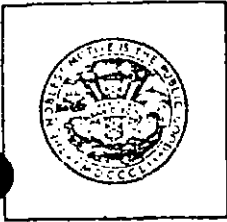


Terrence O. Gilday
Technical Services Supervisor
Environmental Health Department

JCH/pbp

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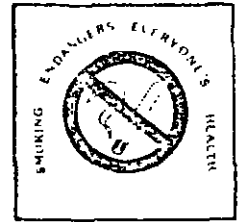


COUNTY OF SAN DIEGO

DEPARTMENT OF HEALTH SERVICES

1700 Pacific Highway, San Diego, CA 92101

JAMES A. FORDE, Director



DIVISION OF ENVIRONMENTAL HEALTH PROTECTION
(619) 236-2243

*Rec'd after deadline
for comments.*

May 28, 1985

Mr. David Holtry
State Water Resources Control Board
Division of Water Quality
P.O. Box 100
Sacramento, CA 95801-0100

RE: UNDERGROUND TANK REGULATIONS

Dear Mr. Holtry:

We have reviewed the proposed amendment of regulations adopted by the State Water Resources Control Board on January 18, 1985 and support the amendment as written.

Very truly yours,

GARY STEPHANY, Chief
Division of Environmental Health Protection

GS:VG:dmc

JUN 3 1985

JUN 3 1985

One Walnut Creek Center
100 Pringle Avenue
Walnut Creek, CA 94596
415-945-3000

#116
Woodward-Clyde Consultants

May 22, 1985

State Water Resources Control Board
Paul R. Bonderson Building
901 P Street
P.O. Box 100
Sacramento, CA 95801

Attention: David Holtry

Dear Mr. Holtry:

I would like to thank you for the opportunity to comment on the proposed amendments to the Underground Tank Regulations. After careful review of said documents, only two specific comments are made. The first comment has to do with Section 2621, and in particular the additional definitions. Perhaps the abbreviations for each organization, such as American National Standards Institute (ANSI) should be included as shown in Appendix I, Table B. This is purely for completeness. The second and more important comment has to do with the deletion of "or less" in Section 2643 (b) and (d). It seems like the deletion of this element would allow leaks of magnitude less than 0.05 gallons per hour to be acceptable. If a constant leak rate of less than 0.05 gallons per hour is permissible, then discharges of up to 435 gallons per year would be deemed acceptable. I think that the element "or less" should remain because leaks of less than 0.05 gallons per hour over a number of years would result in large volumes of discharged material. If another monitoring system incorporated in the dual containment system would address this potential problem, then "or less" should be omitted.

Sincerely,

WOODWARD-CLYDE CONSULTANTS

David W. Parson

David W. Parson
Project Scientist

DWP/sst

Consulting Engineers, Geologists
and Environmental Scientists

Offices in Other Principal Cities

W.U.
225 SWBDWY
PTLD OR 97205 23AM

Western
Union Mailgram



1-002769A143 05/23/85 ICS IPMPTUH PTL SACA
03041 MGM PORTLAND OR 05-23 0356A PDT PTUG

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DH

DAVID HOLTRY
STATE WATER RESOURCE CONTROL BOARD
PO BOX 100
SACRAMENTO CA 95801

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DAVID HOLTRY
STATE WATER CXXXX RESOURCE CONTROL BOARD P.O. BOX 100
SACRAMENTOR/CALIFORNIA/95801
REFERENCE: TITLE 3 SUBCHAPTER 14 SECTION 2621
NOTIFICATION A REQUESTED IN ISSUE JAXXXX MAY 14. KINDLY ADD
TO LIST OF NATIONALLY RECOGNISED INDEPENDENT TESTIN
ORGANISATIONS : T.U.E.V. WEST-GERMANY (TECHNISCHER
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MGMCOMP

Received D:
MAY 24 1985

✓

Shell Oil Company



2DH
#378

P.O. Box 3105
Houston, Texas 77001

May 24, 1985

Mr. David Holtry
Division of Water Quality
State Water Resources Control
P. O. Box 100
Sacramento, California 95801-0100

Dear Mr. Holtry:

We are taking this opportunity to make written comments on the amendment to regulations adopted January 13, 1985, to be codified in Subchapter 16 of Chapter 3, Title 23, California Administrative Code (23 CAC Sections 2610-2714).

Our comments are as follows:

Section 2621, Additional Definitions

"Groundwater" means subsurface water which flows into a well.

Comment - (Add) within a reasonable period.

Appendix I, Table C

Manual of methods for chemical analysis of water and waste,
EPA 600/4-79-020, March 20, 1979.

Comment - This edition has been revised.

Procedures manual for groundwater monitoring at solid waste disposal facilities, EPA 530/SW-611, August 1977.

Comment - This addition is outdated.

General Comment

The API Groundwater Monitoring and Sample Bias publication should be added to this Appendix.

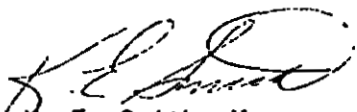
BTMT2514405

FILED IN

MAY 29 1985

We appreciate the opportunity to comment on these regulations.

Very truly yours,



K. E. Smith, Manager
Environmental, Marketing Engineering

GSH/bad



85g.

CALIFORNIA RENTAL ASSOCIATION

216 N. EAST ST. • WOODLAND, CA 95695 • (916) 686-4337

May 28, 1985

Statement to:

State Water Resources Control Board
Division of Water Quality
P.O. Box 100
Sacramento, CA 95801-0100

**Subject: Amendment of Regulations Pursuant To Office Of Administrative
Law Disapproval Of April 1, 1985**

The California Rental Association is a trade association representing about 1,000 outlets which provide tools and equipment to industry, business, homeowners and recreationists. The majority of these rental yards are family-owned, small businesses and many are located in rural and urban-fringe areas. A critical element of the rental business, which depends on the care necessary to enhance the longevity of motors and machines, is an on-site source of fuel for everything from lawnmowers and rototillers to backhoes and forklifts. Fuel represents one of the larger operating overhead expense for most of the California Rental Association members who maintain strict inventory procedures as a cornerstone of their accounting practices.

The California Rental Association is very aware of the liability and responsibility of its membership in maintenance of their underground fuel storage tanks and looks forward to cooperating in a comprehensive program which adequately and judiciously addresses groundwater hazards from underground tanks.

Believing that goal can be achieved while allowing these small business people to maintain the integrity of their livelihoods, members of the California Rental Association have appealed to the State Board and its staff to recognize the unique characteristics and low level of hazards posed by operators of small tanks (2,000-gallons or smaller) with low levels of throughput (20,000 gallons or less annually).

In the opinion memorandum issued April 2, 1985 by the Office of Administrative Law to support its disapproval of the adoption of Sections 2610-2714 of Title 23 of the California Administrative Code, that agency questioned the issue of overly-ambitious regulations adopted with little apparent regard to relating financial burdens threatening small business. These concerns have been expressed repeatedly during the rule-making process by the California Rental Association.

Received DTS

MAY 28 1985

EXECUTIVE DIRECTOR: D. BRUCE EVANS, CAE
ASST EXECUTIVE DIRECTOR: W. E. "BUD" LOEBER

• LEGISLATIVE ADVOCATE RAY HUNTER
• ASSISTANT TO DIRECTOR HAPPY CHASTAIN

#15g.

California Rental Association
Comment: Underground Tank Amendments/5-29-85/

There is no indication, however, in the above-referenced amendments proposed by the State Board that either the public commentary or the Office of Administrative Law queries on this issue have been considered or addressed.

Two specific instances best serve to illustrate this apparent disregard by the State Board of the concerns voiced by the Office of Administrative Law:

The amendments do not address nor include supporting material which delineates the "specific necessity" for the parts of Section 2641, as referenced by the Office of Administrative Law in page six, number one of its memorandum. The necessity of the stringent thresholds of these monitoring alternatives for existing tanks has been questioned repeatedly on behalf of small business which finds itself included in procedures designed to anticipate failures in larger systems.

Similarly, there is no documentation of the response of the Board to the inquiry of the Office of Administrative Law, raised on page seven of its memorandum, concerning an explanation needed for rejection of proposed alternatives which would lessen the adverse economic impact on small business. Specifically, the memorandum reinforced the many of the questions and suggestions raised to the Board on behalf of small business, particularly concerning proposed alternatives and exemptions to certain provisions for tanks under a specified size.

The failure to respond to the specific instances cited above, as well as the lack of acknowledgment of the Office of Administrative Law's opening reasoning for disapproval -- the failure to summarize and respond to approximately 300 comments concerning the regulations -- indicates the Board's suggested amendments are deficient both in responding to the intent of the Office of Administrative Law's commentary and in encouraging public comment on alterations in the final rules.

Indeed, while incorporating specific and minor alterations to address clarity requirements, those procedural steps appear to be insufficient in meeting concerns of the continuing and potentially overwhelming impact on small business of the regulations adopted January 18, 1985. The apprehensions of the business community are reinforced by the issues raised in the Office of Administrative Law's memorandum supporting its disapproval of the regulations.

#85g.

Conclusion:

As repeatedly illustrated to the State Board, the impacts of the underground storage tank regulations adopted January 18, 1985 are vast and potentially devastating for the small business. Those regulations were adopted based upon the assumption that the monitoring alternatives would provide the flexibility needed to accommodate various conditions. In light of the commentary of the Office of Administrative Law, however, members of the California Rental Association urge the Board to reconsider the regulations with a more stringent and realistic appraisal of their actual effect on firms with limited cash reserves and small margins of profit.

Further, the State Board should encourage commentary and public response on any supporting statements of reason which may be submitted to the Office of Administrative Law to respond to any portion of the rulemaking questioned by that Agency. By failing to encourage review by impacted small businesses of the Board's final statement of reasons on that issue, the Board eliminates a potentially edifying educational opportunity. Indeed, a statement of reasons has not been issued for public review with any of the draft regulation proposals which formed the basis of the final rule-making.

Members of the California Rental Association appreciate the opportunity to submit this comment and thank the Board for the opportunity to do so. The California Rental Association urges a reasoned, sound decision-making process to implement regulations which will safeguard the state's groundwater while not putting thousands of businesses and employers at peril.

Ray B. Hunter
Legislative Advocate

JH
87j

Western Oil and Gas Association

727 West Seventh Street, Los Angeles, California 90017
(213) 627-4866

May 29, 1985

Mr. David Holtry
The Division of Water Quality
State Water Resources Control Board
Post Office Box 100
Sacramento, California 95801-0100

Re: Amendments to Subchapter 16 Regulations

Dear Mr. Holtry:

The Western Oil and Gas Association ("WOGA") appreciates this opportunity to comment on the May 14, 1985 proposed changes to the Subchapter 16 regulations governing underground storage of hazardous substances. WOGA's main concern is that all of the issues raised by the Office of Administrative Law ("OAL") in their April 2, 1985 notice of disapproval of the regulations still have not been adequately addressed.

First, OAL noted that "the Board failed to summarize and respond to approximately 300 comments, as required by Government Code section 11346.7(b)(3)." The OAL's Disapproval Opinion does not specifically list all 300 comments so it is unclear whether some of WOGA's comments were included in the comments not adequately summarized or responded to by the Board. However, we believe a number of WOGA's comments were not addressed by the Board and that they must be in order for the proposed regulations to be valid. For example, WOGA remains concerned that the proposed regulations remove discretion from the local agency implementing the regulations regarding the location and number of ground water monitoring wells, and the depth and sampling frequency of such wells. WOGA also commented extensively on the need to allow ground water monitoring as a primary means of monitoring, especially in cases where the ground water is very shallow. As far as we know, this comment has never been addressed by the Board. Finally, throughout WOGA's participation in this rulemaking, we have noted that the Board should allow the local agency to approve monitoring alternatives different from those set forth in the proposed regulations. So long as a different alternative will afford equivalent protection to the ground water, such flexibility is required by California Gov't Code § 11340.1 (which requires performance standards whenever possible). We

Enclosure 108

MAY 29 1985

87j.
Mr. David Holtry
May 29, 1985
Page 2

do not believe there has been an adequate response to this comment.

Second, OAL disapproved the proposed regulations because there was no demonstration of "substantial evidence" for the necessity of a number of sections. Proposed sections 2641(c)(4), 2641(c)(5), 2641(c)(6), 2641(c)(7) and 2641(c)(8) were among those sections listed. Throughout our comments, WOGA has identified a number of issues associated with these subsections. For example, subsection 2641(c)(6) requires inventory reconciliation, tank testing, pipeline leak detectors, soil samples and either vados zone monitoring or ground water monitoring. The tank testing required by this subsection would be on an annual basis. WOGA believes the Board cannot demonstrate by substantial evidence the necessity for annual tank testing (which is estimated to be approximately \$1,500 to \$2,000 per year for a typical service station) in addition to the other monitoring requirements already imposed by this alternative. We will not repeat our comments on the other subsections cited above. However, we note that in the May 14 notice, there is no mention of any proposal to change these subsections. We must assume, therefore, that the Board intends to demonstrate by "substantial evidence" the necessity for these regulations as originally promulgated. In fairness to the regulated community, such a showing should be made prior to adoption of the proposed regulations. Since we have argued all along that many of these subsections, or portions of these subsections, were unnecessary, we would like to be informed of the Board's justification.

Third, another subsection listed by OAL as lacking substantial evidence of necessity was subsection 2642(b)(4), which would preclude from visual monitoring those tanks located "at a facility which is not staffed on a daily basis." If visual monitoring cannot be implemented, then one of the alternatives in proposed section 2641 must be utilized. WOGA has already commented that numerous service stations are not staffed on a daily basis and, in the case of service stations associated with car washes, may not be staffed over a number of days. The regulations should allow for discontinuities in visual monitoring. Nevertheless, even though OAL identified this subsection as one requiring a showing of necessity, the Board's staff has chosen not to propose any changes. We assume, therefore, that substantial evidence will be forthcoming and ask that it be released to the public prior to the adoption of the amended regulations.

87
Mr. David Holtry
May 29, 1985
Page 3

Fourth, subsection 2642(c)(4), also identified by OAL as requiring a further demonstration of substantial evidence of necessity, requires that a record be kept of the visual observations made of an underground storage tank. In past comments, we have disagreed with the need for this added layer of regulatory compliance. We agree that if there is evidence of leakage, the local agency should be notified; however, daily recording of visual inspections, when there is nothing to report, is unnecessary.

Fifth, subsections 2648(g)-(s), also identified by OAL as potentially unnecessary, specify methods for sealing unused borings. These requirements parallel already-existing statutory requirements and remove the discretion of the on-site hydrogeological expert. Methods for sealing unused borings should be left up to the on-site expert. Since amendments are not proposed to these subsections, we must assume that "substantial evidence" exists for the necessity of these subsections, and we look forward to reviewing such evidence.

Sixth, subsection 2645(h), as amended by the staff, specifies methods for the laboratory analysis of soil borings. It states that composite samples may be used but requires that "any pollutant in a sample will not be diluted below detection limits by mixing with uncontaminated samples or samples that contain low concentrations of the pollutant." The quoted language would completely eliminate the ability to conduct composite sampling. Until samples are analyzed, it will not be known which samples are uncontaminated or which contain low concentrations of the pollutant. Therefore, we suggest that the underlined language at the end of the proposed subsection be deleted.

Thank you for your attention to these matters.

Very truly yours,

Robert Harrison /s/

Robert E. Harrison,
Assistant General Manager

RNH:cj

#102 n



California Independent Oil Marketers Association

555 CAPITOL MALL, SUITE 655, SACRAMENTO, CA 95814, (916) 441-5166

JIM DIVINE, Executive Vice President

May 29, 1985

President
RON AHLPORT
R V Ahlport Co Watsonville

Southern Vice President
JIM INGRAM
SKS Inc, Escondido

Northern Vice President
TERRY ANDREWS
Inter-State Oil Co, Sacramento

Treasurer
J COLIN
State Oil Co Los Angeles

PMAA Director
BOB RINEHART
Rinehart Oil, Inc Ukiah

Directors
JACK DEWAR
J B Dewar, Inc San Luis Obispo

BOB SHUSTER
Shuster Oil & Chemical Escondido

MITCH DICIN
M. O Dicin & Sons, Inc Long Beach

BILL KLINK
Eureka Fuel & Mineral Bishop

RON KING
Currie Bros Inc Fresno

JOHN WORTMANN
Wortmann Oil Co, La Crescenta

MICHAEL TOOLEY
Tooley Oil Co Sacramento

JERRY CUMMINGS
Copers Oil Co San Jose

LEIGH ROSS
Western Petroleum, Inc Paramount

DAVID ATWATER
California Fuels Stockton

RON WHITE
R F. White Co Upland

Active Past Presidents
MITCH DICIN
JACK DEWAR
BOB SHUSTER
BOB RINEHART
BERT MCCORMACK
LEE J ATWATER, JR
FRED BERTETTA JR.
ERIC KROESCHE
JOHN E. DE WITT, JR
FRED BERTETTA SR
TOM O'FEN
JACK REED
HEAB RICHARDS
AL WICKLAND

State Water Resources Control Board
901 "P" Street
Sacramento, CA 95814

Re: Adoption of Sections
2610-2714 of Title 23 of the
California Administrative Code

Dear Board Members:

After reviewing the OAL analysis of the Water Resources Control Board proposed regulations we could not find any response to the following:

1. Concern over lack of clarity in 2632(c) (2), 2635(b) (1), 2635(b) (4), 2635(b) (6), 2662(d); and lack of evidence of necessity for sections (2641(c) (4), (2641)(c) (5), (2641)(c) (6), (2641)(c) (7), (2641)(c) (8), (2642)(b) (4), (2642)(c) (4), (2647)(c), (2647)(g).

2. On Page 2 and on Page 7 of the OAL comments, the OAL points out the failure of the Board to explain the rejection of proposed alternatives that would lessen the adverse economic effect on small business.

This is of grave concern to us, since it has the potential for economic ruin for the California Independent Oil Marketer and their customers.

3. We are also concerned that a determination as to whether the regulations impose a mandate on local agencies or school districts was not made.

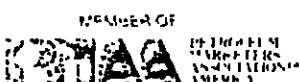
Very truly yours,

Ron Ahlport
President

RA:ss
cc: OAL

RECEIVED

MAY 29 1985



MARRAN COMPANY

#213

DH

20621 REEF LANE
HUNTINGTON BEACH, CA 92646

714-962-5025

May 20, 1985

David Holtry
Division of Water Quality
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95801-0100

Ref: Section 2621

Gentlemen:

Due to the geographic remoteness of the listed nationally recognized independent testing organizations, please include one from California that has National stature i.e.

The Los Angeles City
Department of Building & Safety
Electrical Testing Laboratory

Very Truly Yours,

Randy Hurst
Randy Hurst

MAILED 111
MAY 24 1985



DH
#214

RESOURCE DEVELOPMENT SERVICES

May 20, 1985

David Holtry
Division of Water Quality
State Water Resources Control Board
P.O. BOX 100
Sacramento, CA 95801-0100

Dear Mr. Holtry:

I am writing to you about the changes in the underground storage tank regulations.

My remarks are in regards to Section 2645 (J).

I am sure that any relaxation of the methods mandated for the detection of leaking material will lead to the lack of detection of any substances in some cases.

As an example, I talked to a man two days ago that intends to buy a portable Gas Chromatograph so he could do feild analysis by sticking probes into the ground. There is no analyses that he could do that is even a quarter as sensitive as an EPA method. When I asked him about sensistivity of his equipment, he explained to me that if the leak was big enough, he'd probably catch it.

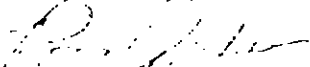
EPA Method 602 is the most common method for detection of gasoline in soil or water. The method requires purge and trap and certain other detectors that are not portable. These features with a GC generate data in the parts per billion range. The portable units as well as methods known as liquid/liquid methods are not reliable even down to parts per million and then it's a judgment call.

The difference in the detection levels could make the difference between catching a small leak and larger one.

So, I urge the Board not allow any striking of the words "EPA approved methods or" "methods of" "presion and accuracy that are".

The OAL must be made to understand that EPA methods are the accepted, most accurate ways to acheive data worth having, and that's what we are all looking for, right? The law has come this far why make the results invalid by using second rate data.

Sincerely,


Ross Andress

Received By:

MAY 23 1985

Errata Sheet -

Aug 23 Regs.
~~Aug 27~~

Change II. B. 1. k.-g label to II. B. 1. k-r.

Change III .C. 1-14. to

III .C. 1-10

IV .C. 11-15